93-112

Supreme Court, U.S.
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NO._____

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

RUSSELL PRITCHARD, JR. AND
DEBORAH PRITCHARD,

Petitioners

VERSUS

MELVIN GOODIE, ET AL

Respondents

PETITION FOR WRIT OF CERTIORARI
FROM THE UNITED STATES COURT OF APPEAL
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION FOR REVIEW

Did the Court of Appeal err in affirming the Trial Judge's factual finding that the actions of Officer Melvin Goodie when he beat Russell Pritchard, although he was off duty, did not constitute conduct "under color of state law" as required by 42 U.S.C. Section 1983?

NAMES OF ALL PARTIES

1. Russell Pritchard, Jr. - Plaintiff
2. Deborah Pritchard - Plaintiff
3. Estate of Melvin Goodie - Defendant
4. Breaux Bridge Police Department - Defendant
5. Police Chief George Menard - Defendant
6. Howard Devillier - Defendant

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OPINIONS BELOW

There are no reported opinions in this case. The opinion of the Court of Appeals for the Fifth Circuit is attached hereto as Attachment A. The opinion of the United States District Court for the Western District of Louisiana is attached hereto as Attachment B. The Trial Judge's reasons for judgment are attached hereto as Attachment C.

I.
GROUNDS FOR JURISDICTION

On March 25, 1993 the United States Court of Appeal for the Fifth Circuit affirmed the United States District Court (Western District of Louisiana) decision. The Supreme Court of the United States has jurisdiction to review the judgment in question under 28 U.S.C. 1254.

II.
CONSTITUTION AND STATUTORY PROVISION

42 U.S.C. Section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia subject, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

Russell Pritchard was traveling to his home in Breaux Bridge, Louisiana from work at approximately 8:00 p.m. on September 17, 1987. Pritchard was proceeding on Rees Street, a roadway leading to Breaux Bridge, Louisiana. A truck in front of him came to an abrupt unsignaled stop. Pritchard stopped suddenly due to the abrupt stop by the truck preceding him, causing the vehicle behind Pritchard to blow his horn. The truck preceding Pritchard then made an unsignaled left turn. When the preceding truck made the unsignaled left turn, Pritchard rolled down his window and called out "stupid nigger." Pritchard continued on Rees Street toward Bridge Street. The driver of the truck turned around and pursued Pritchard. The driver of the truck pursued Pritchard through the Town of Breaux Bridge, and on one occasion passed Pritchard and jammed on his brakes trying to stop Pritchard.

During the chase, the truck flashed his headlights from bright to dim numerous times, blew his horn and waved his arm out the truck window and shouted at Pritchard. Pritchard approached the Ruth Canal Bridge, and had to stop his vehicle to wait for vehicles crossing the single laned bridge. At the Ruth Canal Bridge Pritchard's car door was suddenly opened and the truck driver struck Pritchard with his fist three times consecutively on the left side of Pritchard's face.

Pritchard did not see the truck driver approach his vehicle. Melvin Goodie, the truck driver, had a muscular build and was approximately six foot three inches in height and two hundred thirty to two hundred forty pounds. After the altercation, the truck driver returned to his truck. Pritchard followed in his vehicle to obtain the license plate number of the truck. Pritchard then proceeded to the Breaux Bridge Police Department and observed the truck driver arriving at the police department simultaneously with him. The truck driver grabbed

Pritchard by the back of the neck, pushed him and shoved him through the door of the police station and told Officer David Clark to "take care of him". The truck driver brought Pritchard to a room and left him in the room in the dark with the door locked for appr ximately five minutes.

Later, Officer Howard Devillier entered the room, identified himself and identified the driver of the truck as Officer Melvin Goodie. Goodie continued to rant, rave and curse at Pritchard while at the police station. Goodie continued this behavior for approximately ten to fifteen minutes until Officer Devillier called for assistance. Officer David Clark entered the room and attempted to get Goodie to leave. Officer Devillier requested Goodie to leave which request was refused by Goodie. Pritchard phoned his wife, Deborah Pritchard, who arrived approximately ten minutes later with a family friend, Gerald LeBlanc. Goodie continued to harass Pritchard even after his wife and Gerald LeBlanc arrived.

Pritchard was permitted to travel to Gary Memorial Hospital to receive medical treatment for his face which was badly bruised and lacerated due to the blows received from Goodie. Pritchard returned to the police station approximately two hours later. Pritchard learned he had been charged with two offenses, disturbing the peace by use of vulgar language and resisting an officer. These charges were subsequently dismissed.

Pritchard was treated by Dr. Morell Yongue at the Gary Memorial Hospital for bruises and lacerations. He consulted Dr. Yongue on two more occasions after the date of the incident. Pritchard also received treatment from Dr. Denbo Montgomery on one occasion.

Goodie continued to harass Pritchard after this incident by following him through town even past the city limits of Breaux Bridge, Louisiana to Pritchard's home. The incident and subsequent activity of Goodie caused Pritchard to become

extremely paranoid in regard to his well being and that of his wife and daughter. Pritchard consulted Dr. Luther Cole, a clinical psychologist, who concluded that Pritchard suffered from post-traumatic stress disorder and was paranoid and hypervigilant. Pritchard consulted Dr. Cole intermittedly from August, 1988 to the date of trial.

Pritchard brought a lawsuit in the United States District Court for the Western District of Louisiana. That Court had jurisdiction to hear and decide the matter pursuant to 42 U.S.C. 1983, 1985, 1986 and 1988 as well as a first, fourth, fifth, eighth and fourteenth amendments to the United States Constitution as well as 28 U.S.C. 1331 and 1343.

The Trial commenced on December 16, 1991, December 17, 1991, and continued to January 27, 1992 and January 28, 1992. The matter was taken under advisement and reasons for judgment were rendered March 4, 1992 and a formal judgment signed March 31, 1992. A Notice of Appeal was lodged by plaintiffs on April 13, 1992. The Fifth Circuit Court of Appeal affirmed the District Court and plaintiffs now ask this Honorable Court for review of the improper judgment.

ARGUMENT ON ISSUE

I. Did the Court of Appeal err in affirming the Trial Judge's factual finding that the actions of Officer Melvin Goodie when he beat Russell Pritchard, although Officer Goodie was off duty, was not conduct "under color of state law" as required by 42 U.S.C. Section 1983?

The trial court held that Goodie was not acting "under color of State law" because he was off duty on September 17, 1987 and did nothing to indicate that he was a police officer.

The provisions of 42 U.S.C. Section 1983 provide:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage of State, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities, secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

An action by a party will be determined to be under the color of state law when there is a sufficiently close nexus between a state and a challenged action. Johnson v. Orr, 780 F.2d 836 (3rd Cir. 1986).

On September 17, 1987 at the time of the incident Melvin Goodie was off duty. Nevertheless, Goodie testified in his deposition as well as in his criminal trial and in his statement that he was acting as a police officer during his chase of the Pritchard vehicle and also during his altercation with Pritchard and thereafter at the police station. Goodie testified at his criminal trial that:

"It was up to my duties as a police officer, seeing that the guy was driving recklessly that - that there was either somebody else that might be in danger or he might endanger somebody else's life by driving the way, in that manner he was driving."

Goodie testified on several occasions that he showed his officer's badge in an attempt to stop Pritchard and also verbally identified himself as a police officer. Goodie blew the horn on his vehicle and blinked his lights in an attempt to stop Pritchard. Goodie testified in his deposition that Pritchard was under arrest when he told him to go back to the police station.

At his criminal trial Goodie testified he was in pursuit of Pritchard and Pritchard was fleeing from him through town. Although Pritchard testified at trial he saw the lights of Goodie's truck flicker from bright to dim repeatedly, he heard shouting and heard Goodie's horn blowing, he could not understand what Goodie was saying and was too far away to observe Goodie holding the badge.

Goodie testified that after arrival at the police station he escorted Pritchard to the interrogation room. Officer Clark confirmed that statement. The interrogation room is located in the rear of the police station. Goodie and Pritchard entered through the front door of the station according to Officer Clark.

Goodie testified at his criminal trial that he "arrested" Pritchard. The official arrest report revealed Pritchard was charged with "resisting an officer". The booking sheet indicated Goodie was the arresting officer. The location of the alleged offense committed by Pritchard was within the city limits of Breaux Bridge, Louisiana.

Pritchard was not charged with a crime against a civilian, rather he was charged with "resisting an officer". The officer against whom the offense was committed was Officer Goodie. This confirms that Goodie was engaged in his duties as

a police officer at the time of the alleged offense by Pritchard. Otherwise, he could not be charged with "resisting an officer".

The booking sheet referred to Melvin Goodie as "Officer Goodie". The affidavit of charges with respect to Pritchard's offense of "resisting an officer" stated that Pritchard was "stopped by officers, and he refused to give information and an altercation occurred between subjects".

Officer Howard Devillier testified Goodie told him he identified himself as an officer to Russell Pritchard and showed his badge. Officer Devillier testified that off duty arrests were allowed by the Breaux Bridge Police Department and he had made off duty arrests while employed with the Breaux Bridge Police Department. Officer Devillier further testified that officers could make arrests while off duty because they were police officers twenty-four hours once you make that commitment, and when you see something of injustice, you are supposed to take action.

Melvin Goodie assisted Officer Howard Devillier in a search of Pritchard's vehicle. This further confirms that Goodie was not acting as a civilian as he would not have made an arrest and subsequently searched the Pritchard vehicle. Additionally, if Goodie was acting as a civilian, instead of a police officer, why was he not arrested for harassing and threatening Pritchard?

After arrival at the police station Goodie testified he told Pritchard to get out of his car and told the dispatcher on duty to call a patrolman to accomplish the booking procedure. Goodie testified that he put Pritchard in the back room with the door closed. These were actions of a police officer, not a civilian.

The distinction between whether or not a police officer is on duty or off duty or in uniform or out of uniform is not controlling on a determination of whether the officer was acting under color of state law for purposes of the civil rights statute. Stengel v. Belcher, 522 F.2d 438 (6th Cir. 1975). The actions of an officer who undertakes to perform official duties are included

within 42 U.S.C. Section 1983 whether they hew to the line or over step it. Cluse v. United States, 325 U.S. 91, 65 S.Ct 1031 (1945).

The inquiry should be the nature of the act performed, not the clothing of the actor or whether the actor is on duty or off duty in reaching a determination as to whether the officer is acting under color of state law for purposes of the Civil Rights Statute. Stengel v. Belcher, supra. An off duty police officer although not in uniform, but who is in possession of a badge and gun and who is subject to department regulations is required to "be always subject to duty" and/or acting under color of state law within 42 U.S.C. Section 1983. Davis v. Murphy, 559 F.2d 1098 (7th Cir. 1977).

Prior rulings have held that an off duty police officer is acting under color of state law when, while working as a security guard, he identifies himself as a police officer, displays his badge and tells a shopper she is under arrest and files an arrest report with the police department. Alvarado v. Dodge City, 702 F.2d 935 (Kan. 1985). Further, cooperative activity between the police department and an off duty officer employed as a security guard is sufficient to make an off duty officer "acting under color of state law". Kendal v. Orr, 628 F.Supp. 326 (D.C. Kan. 1985). In Stengel v. Belcher, supra, Belcher was an off duty police officer in a cafe with his girlfriend. He was not in uniform at the time. A fight broke out in the cafe and without identifying himself as a police officer at any time, Belcher involved himself in the altercation. On appeal, Belcher claimed he was engaged in private social activities, was not in uniform, was off duty and never identified himself as an officer. (Stengel at pps. 440 and 441). The police officer in Stengel testified as did Officer Devillier in the instant case that official regulations require an officer to take action in any type of police or criminal activity twenty-four hours a day. The court found Officer Belcher was acting under color of state law.

Plaintiffs contend that Officer Goodie was acting as a police officer and Officers Devillier and Clark cooperated with him as such. The following activities substantiate that Goodie's actions were in his capacity as a police officer:

1. Repeatedly attempting to identify himself as an officer;

2. Arresting and filing charges against Pritchard for resisting an officer;

3. Escorting Pritchard to the interrogation room and locking him in it;

4. Directing Officer Clark to call another officer to assist him;

5. Directing Officer Clark to "take care" of Pritchard;

6. Assisting Howard Devillier in a search of Pritchard's car;

7. Being allowed to harass Pritchard verbally in the presence of Officers Clark and Devillier without intervention: and

8. Designating himself as the arresting officer on the booking sheet and affidavit.

In view of the foregoing it appears clear that the trial court erred when they found that Goodie was not acting as an officer so as to make Goodie's actions under color of state law as required by 42 U.S.C. Section 1983.

CONCLUSION

The finding by the lower courts that Officer Melvin Goodie was not acting "under color of state law" was erroneous. The proper analysis and conclusion would result in a finding that Officer Goodie was acting "under color of state law" as required under 42 U.S.C. Section 1983. Petitioners pray that this Honorable Court review the statements and record and overturn the deci-

sion, granting judgment in favor of petitioners, Russell Pritchard, Jr. and Deborah Pritchard.

Respectfully submitted,

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By: _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been forwarded to all counsel of record by placing same in the United States Mail, postage prepaid and properly addressed. Opelousas, Louisiana, this 14th day of June, 1993.

_____
Leslie J. Schiff

APPENDIX

1. Judgment of Court of Appeals for the Fifth Circuit

2. Opinion of the United States District Court for the Western District of Louisiana

3. Reasons for Judgment of United States District Court for Western District of Louisiana

March 25, 1993

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-44 34

RUSSELL PRITCHARD, JR. AND DEBORAH PRITCHARD

Plaintiffs-Appellants,

VERSUS

MELVIN GOODIE, ET AL .

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(88-CV-2295)

Before GARWOOD and HIGGINBOTHAM, Circuit Judges, and SCHWARTZ , District Judge.

PER CURIAM:

This is an appeal from a bench trial wherein the district court found that the altercation of an off-duty police officer with appellant Russell Pritchard was not an act under the color of

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*Senior District Judge of the Eastern District of Louisiana, sitting by designation.

[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the Court has determined that this opinion should not be published.

state law. Further, the district court held that the City of Breaux Bridge and its Chief of Police could not be held liable under federal or state law for the purely private acts of one of its employees. Appellants on appeal contest these holdings; the district court's factual findings regarding the behavior of two officers present during a portion of the altercation; the credibility of a witness; the admissibility of certain testimony; and the quantum of damages. Finally, the appellants urge us to reverse because the district court refused to recuse itself from the case and grant a new trial.

We hold that the district court's findings with respect to whether the defendant acted under the color of state law are not clearly erroneous. Therefore, appellants' arguments regarding the City of Breaux Bridge and the Chief of Police are moot. Likewise, the district courts factual findings regarding the behavior of the two officers present during the ongoing altercation, the credibility of a witness, the admission of testimony, and the quantum of damages were not clearly erroneous. Lastly, we hold that the district court properly refused to grant appellants' motion for recusal of the trial judge and a new trial.
AFFIIRMED.

March 31, 1992

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

RUSSELL PRITCHARD, JR. AND DEBORAH PRITCHARD	:	CIVIL ACTION NUMBER: 88-2295
VS.	:	SECTION "L"
	:	JUDGE HAIK
MELVIN GOODIE, INDIVIDUALLY, AND AS A PEACE OFFICER FOR THE CITY OF BREAUX BRIDGE, ET AL	:	MAGISTRATE TYNES

JUDGMENT

THIS MATTER was tried before the Honorable Richard T. Haik on December 16-17, 1991, and January 27-28, 1992. For the reasons set forth in the "Reasons for Judgment" dated March 4, 1992, and filed of record on that date:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein against the plaintiffs, RUSSELL PRITCHARD, JR. and DEBORAH PRITCHARD, and in favor of the defendants: CITY OF BREAUX BRIDGE; CHIEF GEORGE MENARD; DAVE CLARK; and HOWARD DEVILLIER. Accordingly, all of the claims of the plaintiffs urged under both federal and state law against the aforesaid defendants are hereby dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the claims of the plaintiffs urged against the ESTATE OF MELVIN GOODIE under federal law be and are hereby dismissed with prejudice; however, on their state law claims, judgment is hereby entered in favor of plaintiffs and against the

ESTATE OF MELVIN GOODIE in the amount of Four Thousand Two Hundred Forty-Three and 30/100 ($4,243.30) Dollars, together with post judgment interest and all costs of these proceedings.

THIS DONE AND SIGNED in chambers in Lafayette, Louisiana, on this 27th day of March, 1992.

JUDGE RICHARD T. HAIK
UNITED STATES DISTRICT COURT JUDGE

Respectfully submitted:

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March 4, 1992

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

RUSSELL PRITCHARD, JR., et ux

VERSUS

MELVIN GOODIE,
individually and as a peace
officer for the CITY OF
BREAUX BRIDGE, et al

CV 88-2295
JUDGE HAIK
MAGISTRATE
JUDGE TYNES

REASONS FOR JUDGMENT

Plaintiffs, Russell Pritchard Jr., and his wife, Deborah Pritchard, filed suit against Melvin Goodie, individually and as police officer for the city of Breaux Bridge, George Menard, Breaux Bridge Chief of Police, Officer David Clark, Howard Devillier, and the city of Breaux Bridge. Trial initially began on December 17, 1991, and lasted one day. It resumed January 21, 1992, until its conclusion. Anne E. Watson was attorney for the plaintiffs and Chester Cedars and Michael Harris represented the defendants.

The Facts

Russell Pritchard, Jr., a white man, was driving his car within the city limits of Breaux Bridge. A pick-up truck loaded with furniture was ahead of Pritchard and was being driven by Melvin Goodie. Goodie, who was an off-duty Breaux Bridge police officer at the time, was black.

Because Goodie applied his brakes to make an unexpected left turn, Pritchard had to swerve quickly to avoid an

accident. He responded by rolling down his window and calling out, "stupid nigger", to Goodie.

The facts establish that the pick-up truck was a private vehicle lent to Goodie to haul furniture. It had no emblem, siren, or other indicia of police authority.

After the racial slur, Goodie made a U-turn and chased after Pritchard. Goodie flashed his headlights from dim to bright, honked his car horn, and waved his arm out of the window. Pritchard tried to lose Goodie. When Pritchard arrived at the Ruth Canal Bridge, which is outside the city limits of Breaux Bridge, he was forced to stop because only one lane of traffic is permitted across the bridge. Goodie pulled up, opened Pritchard's car door, and violently struck him three times.

When Goodie left, Pritchard followed him with the intent of getting his license plate number and reporting the incident to the Breaux Bridge police department. According to Pritchard, Goodie never identified himself as a police officer and never told him to go to the police station.

The circumstances of Pritchard and Goodie's arrivals at the police station differ. However, it is undisputed that Goodie never struck Pritchard at the station. Officer Devillier investigated the incident, and filed out an arrest report charging Pritchard with disturbing the peace and resisting arrest. Those criminal charges were subsequently dismissed, and Goodie was found not guilty of criminal charges later filed against him relating to this incident.

The Law

42 USC 1983 provides, in part :

"Every person who, under color of any statue, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes

> to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. ..."

42 USC 1983 forms the basis of one of plaintiffs' theories of liability against Goodie. In order to prevail, they must prove by a preponderance of the evidence that the conduct of the defendant was "under color of state law" and that the conduct resulted in a deprivation of rights, privileges, and immunities secured by the United States Constitution or both. Johnson v. Morel, 876 F.2d 477 (5th Cir. 1989).

Plaintiffs sue George Menard, Breaux Bridge's Chief of Police, under three theories of liability. The first theory is for creating a policy or custom under which unconstitutional policies occurred or allowing such policy or custom to continue, and for being grossly negligent in managing Goodie, who caused the unlawful event. Ledomicile Inc. v. Louisiana, 674 F.Supp. 546 (E.D. La. 1987). Plaintiff contends Menard is also liable under La. C.C. Art. 2320, which says,

> "Managers and employers are answerable for the damage occasioned by their servants and overseers, in the exercise of the functions in which they are employed."

Finally, plaintiffs allege that Menard is liable under the doctrine of respondeat superior.

Plaintiffs urge that the city of Breaux Bridge is liable under 42 USC 1983 on the basis of a policy of deliberate indifference to the constitutional rights of a person within its domain. According to Fiacco v. City of Rensselaer, 783 F.2d 319 (2nd Cir. 1986), a municipality that tolerates unconstitu-

tional acts by its city employees can form the basis for municipal liability.

At the outset, it is important to focus on whether or not Goodie's actions violated 42 USC 1983, since no violation by Goodie would, in essence, mean no liability on the other defendants. With respect to Goodie, both parties agree that it is the nature of the act performed, not the clothing of the actor or even the status of being on duty or off duty, which determines whether an officer is acting under color of state law for purposes of the Civil Rights statute. Stengel v. Belcher, 522 F.2d 438 (6th Cir. 1975).

When Goodie followed Pritchard to the Ruth Canal Bridge, there was nothing to indicate that the pick-up truck was a police vehicle or that a police officer occupied it. As stated earlier, the truck had no siren or emblem, and it was privately owned. When Goodie exited the truck and approached Pritchard's vehicle, he was in plain clothes.

Pritchard admitted that he followed Goodie after the altercation to get his license plate number, and he went to the police station to report the incident.

In his deposition, Goodie testified that he tried to identify himself as a police officer. But Pritchard testified that he found out for the first time that Goodie was a police officer when Officer Devillier, who handled the situation at the police station, told him. Pritchard further testified that Goodie never told him to follow Goodie to the police station. According to Pritchard's testimony, Goodie never arrested him. Of great significance was Pritchard's testimony that Goodie never did anything to him to indicate he was a police officer.

This Court concludes that the altercation between Pritchard and Goodie was simply an unfortunate one between two private citizens. Plaintiffs have failed to prove that the actions were "under color of state law". Therefore, plaintiffs cannot prevail under 42 USC 1983. Plaintiffs also fail to meet

their burden of proof with respect to the state law claims under La.C.C. Art. 2320, excessive force, or intentional infliction of emotional harm.

Further, although acts of violence can rarely be condoned, the event triggering the altercation was a racial slur directed at Goodie.

With respect to the claims against Chief Menard, the other officers, and the city of Breaux Bridge, this Court can find no liability on their part. With specific reference to the Breaux Bridge police department, Officer Devillier, the officer in charge, and Officer Clark, the dispatcher, handled the matter very professionally. Although Goodie was angry and yelling at the police station, as was Pritchard, Officer Devillier separated the men and diffused the situation.

According to the deposition of Gerald LeBlanc, a neighbor of the Pritchards who accompanied Mrs. Pritchard to the police station, "He (Devillier) was trying to do the job properly and trying to find out what happened and tried to keep peace at the same time."

Officer Devillier, who is no longer with the Breaux Bridge police department, testified that he made the decision to book Mr. Pritchard on the charges after discussing it with Mr. Goodie and drawing his own conclusion. He further testified that he performed all of the police functions.

In addition to finding that Goodie did not act under color of state law, this Court finds that no other defendant acted with deliberate indifference or in any other manner which would trigger liability on its behalf. Further, the record reveals that in various instances where members of the Breaux Bridge police department behaved below acceptable standards, those members were disciplined. These disciplinary measures ranged from suspension without pay to termination.

Because of the allegations in this suit, the Court feels that it is necessary to make some comment upon the credibility

of some of the witnesses who testified at trial. Howard Devillier's testimony was very believable. The same cannot be said for Mr. Pritchard. Although Mr. Pritchard testified that he was reluctant to leave his house and fearful as a result of this incident, he testified that he subsequently attended the Breaux Bridge Crawfish Festival, a nationally known event drawing thousands of people. Even more incredible, he also testified that he did not know whether or not calling a black man "stupid nigger" would be inflammatory. Mr. Pritchard further testified that he is more fearful from the altercation with Goodie, who is now deceased, than as the victim of an incident where he was shot six times. The perpetrator in the second incident is still alive. The Court finds the testimony of Mr. Pritchard incredible and unbelievable.

This Court does, however, find that Melvin Goodie is individually liable for his actions of September 17, 1987. He is responsible for the doctor bills of Yongue and Montgomery, who Pritchard saw as a result of the physical injuries. He is also responsible for the emergency room bills and any pharmaceutical bills.

However, the past and future bills of Dr. Cole, a psychologist who Mr. Pritchard sees, are not so easy to delineate. The record reflects that Mr. Pritchard saw Dr. Cole weekly from March 1988 through August 1988. Those visits began some six months after the altercation with Goodie, and also after Mr. Pritchard was shot in an unrelated incident shortly after September 17, 1987. Dr. Cole charges $110 per visit. From August 1988 through August 1991, Mr. Pritchard saw Dr. Cole only three times. Mr. Pritchard has seen Dr. Cole every week since September 1991, but it is important to note that trial commenced in December 1991. Further, the testimony establishes that these visits have not been solely related to the incident with Melvin Goodie; Dr. Cole has helped Mr. Pritchard to deal with other problems in his life such as the shooting and his relationship with his father. Melvin Goodie should not be held responsible

for all of Dr. Cole's bills. Therefore, Melvin Goodie is liable for one half of Dr. Cole's bills incurred through August of 1991.

Melvin Goodie is also liable for $2500, an amount this Court feels is due Mr. Pritchard and his wife as a result of their mental anguish and pain and suffering.

Defendant is to submit a judgment in accordance with the terms of these reasons and approved as to form by the plaintiff. THUS DONE AND SIGNED, this 11th day of March, 1992.

JUDGE RICHARD T. HAIK